REMARKS

Claims 2-18 and 20-38 are pending, in which claims 1 and 19 are canceled, and no claims are currently amended, withdrawn, or newly presented.

The final Office Action mailed September 22, 2004 rejected claims 2-6, 9, 20-24, 27, 37, and 38 as obvious under 35 U.S.C. § 103(a) based on *Hammer et al.* (US 5,058,056) in view of *Raghunandan et al.* (US 6,775,689), claims 7, 8, 10, 11, 25, 26, 28 and 29 as obvious under 35 U.S.C. § 103(a) based on *Hammer et al.* and *Raghunandan et al.* and further in view of *Gai et al.* (US 6,167,445), claims 12, 13, 30 and 31 as obvious under 35 U.S.C. § 103(a) based on *Hammer et al.* and *Raghunandan et al.* and further in view of *Bullock et al.*(US 6,631,414), and claims 14-18 and 32-36 as obvious under 35 U.S.C. § 103(a) based on *Hammer et al.* and *Raghunandan et al.* and further in view of *Bowman-Amuah* (US 6,442,547).

Applicants respectfully traverse the obviousness rejections because none of the applied references, neither alone nor in any reasonable combination, suggest or disclose "a message processor configured to **parse a message for determining a type of communication service**" and "**a service controller configured to receive the message if the type of communication service corresponds to the service controller, wherein the service controller determines a policy based on the message and generates a control signal according to the policy**" as recited by independent claim 37, or "receiving a network message and **parsing the message to determine a type of communication service with a network processor of the external processor; determining a policy in response to the message with a service controller of the external processor**," and "**generating and transmitting a control signal according to the policy**" as recited by independent claim 38.

By contrast, *Hammer et al.* discloses a system for providing the ability to attach workstations to multiple computers to provide high availability of system resources to the workstation users. A primary workstation controller is connected to a primary host computer and to a plurality of workstations. A secondary workstation controller is connected to a secondary host computer and is also connected to the plurality of workstations in a manner to be pollable by the primary workstation controller (col. 1: 47-50).

The cited passages of col. 2: 55-68 and col. 3: 1-29 of *Hammer et al.*, at best, merely describe, in general terms, a series of data processing sequences for controlling multiple workstations. Host systems 10 and 100 (per col. 3: 11-13) send commands to workstation controllers 40 and 400 for loading the poll list. At col. 3: 19-22, *Hammer et al.* states, "The **primary and secondary control modes are set in accordance with the states of control bits in the load poll list command**. Except for these control bits, the load poll list commands are identical." A close study of the *Hammer et al.* system, per col. 3: 10-22, reveals that the workstation controllers 40 and 400 (FIG. 1) operate to load the poll list, and provide no capability to "**parse a message for determining a type of communication service**."

The Office Action (p. 3) correctly acknowledges, "Hammer fails to teach the limitation including a message processor configured to parse a message for determining a type of communication service; and a service controller configured to receive the message if the type of communication service corresponds to the service controller, wherein the service controller determines a policy based on the message and generates a control signal according to policy." However, the Office Action (p. 3) then asserts, "Raghunandan teaches the use of a parsing mechanism for identifying email content segments and transmission control directives and segments for constructing output email messages (col. 4, lines 4-23)." The Office Action (p. 3) then makes a leap in logic to contend that it would have been obvious "to modify Hammer in

view of Raghunandan to use a message processor configured to parse a message for determining a type of communication service; and a service controller configured to receive the message if the type of communication service corresponds to the service controller, wherein the service controller determines a policy based on the message and generates a control signal according to policy. One would be motivated to do so because it would allow commands for the PAD to be sent by **the customer router**."

Raghunandan et al. (per Abstract) discloses a system for restructuring email messages for transmission to plural recipients by providing transmission control directives and email content segment identifiers supplied by the user, parsing the directives and email contents, expanding aliases, and applying the directives to restructure the email contents by sending selected segments to selected recipients in identified lists. The selected segments may be reordered in a defined sequence prior to transmission.

Applicants are unable to determine what "customer router" of *Hammer et al.*, modified or unmodified, the Office Action would presumably use to send the load poll list commands to the workstation controllers, as there is no mention whatever of any "customer router" by either of *Hammer et al.* or *Raghunandan et al.* Obviousness rejections require some evidence in the prior art of a teaching, motivation, or suggestion to combine and modify the prior art references. *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001); *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). This requirement has not been met by the Office Action.

Moreover, *Hammer et al.*'s system (per col. 13: 24-25) is designed specifically to have "a minimal number of single elements in the data path that are subject to failure." Thus,

Hammer et al. teaches away from the combination suggested by the Office Action as it would add new levels of complexity with no benefit to *Hammer et al.*'s system, and further, the suggested modification would render *Hammer et al.*'s system unsatisfactory for its intended purpose.

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 218 USPQ 769 (Fed. Cir. 1983). A prior art reference must be considered in this entirety including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). If a proposed modification would render the prior art being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Further, neither *Hammer et al.* nor *Raghunandan et al.* is analogous prior art. Claims 37 and 38 involve a "network **access** system," while *Hammer et al.* is concerned with reliable control of workstations by using primary and secondary workstation controllers and polling the workstations. *Raghunandan et al.* is concerned with restructuring email messages. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992); see also *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."). In this case, neither *Hammer et al.* nor *Raghunandan et al.* would have logically commended itself to an inventor's attention in resolving network access

problems, as neither the workstation control discussed in *Hammer et al.* nor the restructuring of email discussed in *Raghunandan et al.* considers or resolves problems in network access.

Thus, the obviousness rejection of independent claims 37-38 based on *Hammer et al.* and *Raghunandan et al.* is unsustainable and should be withdrawn.

The rejection of dependent claims 2-6, 9, 20-24, and 27 should be withdrawn for at least the same reasons as those discussed above with regard to their respective independent claims, and these claims are separately patentable on their own merits.

For example, claim 6 recites, "the service controller includes means for injecting a packet into a traffic flow handled by the programmable access device." The Office Action (p. 5) contends that this is taught by *Hammer et al.* at col. 3: 60 - col. 4: 44. However, the cited portion of *Hammer et al.* merely refers to the workstation controller 40 sending "a message" to the CPU 20 either "indicating that the secondary or standby workstation controller 400 does not respond to polls" (per col. 4: 6-9) or "indicating to CPU 20 that the secondary or standby workstation controller 400 responded to a poll" (per col. 4: 34-36). *Hammer et al.*, at col. 2: 67, states, "Workstation controller 40 is attached to the CPU 20," with no further explanation of how they are "attached," much less of how "a message" would be sent from the workstation controller 40 to the CPU 20. Thus, there is no teaching of "injecting a **packet** into a traffic flow" handled by any programmable access device, and therefore the rejection of claim 6 is unsustainable.

With respect to the remaining obviousness rejections, the addition of *Gai et al.*, *Bullock et al.*, and *Bowman-Amuah,* does not cure the deficiencies of *Hammer et al.* and *Raghunandan et al.* The secondary reference of *Gai et al.* is applied for a supposed teaching of policy servers (Office Action, page 6). *Bullock et al.* is cited as supposedly teaching a job event handler that ends and deletes a TCP session in response to a session activity level (Office Action, page 8).

Bowman-Amuah is applied for a supposed teaching of a conference call service controller (Office Action, page 9). Accordingly, the various obviousness rejections are unsustainable.

For example, claim 10 recites, "a signaling controller that transmits signals to configure network hardware to provide network connections," and claim 11 recites, "wherein the signals specify a quality of service." In its rejection of these claims, the Office Action (p. 7) states, "Gai teaches a method and apparatus for applying high-level, quality of service policies at dissimilar computer network devices (see abstract). Gai teaches the **use of signals with a quality of service** (col. 6, lines 27-67; col. 7, lines 1-29)." The Office Action then contends that it would have been obvious "to modify Hammer in view of Gai to use a signaling controller that transmits signals, that specify a quality of service, to configure network hardware to provide network connections. One would be motivated to do so because signals with a specific quality of service help make efficient traffic management decisions."

Applicants respectfully submit that the Office Action does not track the specific claim language, for example, of claim 11, with respect to *Gai et al.*, as *Gai et al.* merely **associates** "Quality of Service labels to specific traffic types," (per col. 6:48-49) and does not mention "the signals specify a quality of service" as recited by claim 11. The Office Action then further proposes a modification to *Hammer et al.*'s system that again adds new levels of complexity with no real benefit to *Hammer et al.*'s system, as *Hammer et al.* is not concerned with transmitting "signals to configure network hardware to provide network connections" such that the system would benefit form signals that specify a quality of service. Thus, *Hammer et al.* teaches away from the combination suggested by the Office Action. Further, none of the applied references provide any motivation to modify *Hammer et al.* as the Office Action suggests.
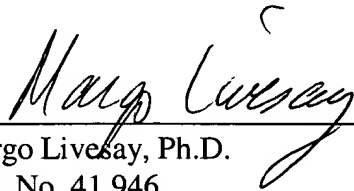
Thus, the rejection of claims 2-18 and 20-38 should be withdrawn.

Therefore, the present application overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8508 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

DITTHAVONG & CARLSON, P.C.

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Date

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